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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/942,244	08/29/2001	David Henderson	14142	9133

7590

04/11/2003

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EXAMINER

CULBRETH, ERIC D

ART UNIT

PAPER NUMBER

3616

DATE MAILED: 04/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/942,244

Applicant(s)

HENDERSON ET AL. *le*

Examiner

Eric D Culbreth

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 46 and 47 is/are allowed.
- 6) ☒ Claim(s) 1-14, 21-39, 42 and 43 is/are rejected.
- 7) ☒ Claim(s) 15-20, 40, 41, 44 and 45 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other:

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to because of the following informalities. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

a. The lead line for reference numeral 42 in Figure 1 does not point to the inner surface (note page 9, line 16).

b. Reference numeral 42 (page 15, line 2 and the remainder of the specification) is not on the drawings.

c. Reference numeral 126 (page 12, line 4) is not on the drawings (from the drawings, it appears this should be 136).

d. Regarding page 14, lines 20-21, the lead line for reference numeral 238 does not point to the opening.

e. Reference numeral 212 (page 14, line 7 and the remainder of the specification) is not a curtain in the drawings.

f. Reference numeral 213 (page 14, line 15) does not refer to the edge of a curtain in the drawings.

g. In Figure 5, at the top of the Figure, reference numeral 212 should apparently be 210.

h. In Figure 5, at the middle of the Figure, reference numeral 211 should apparently be 212.

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Generally, regarding pages 14-16 of the specification, there is great inconsistency over how the reference numerals 210-213 are used. The specification and drawings should be carefully compared and rewritten/corrected to ensure that only one reference numeral consistently refers to only one part of the invention.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the fastener attached to the inner surface of the bushing (claims 20 and 29) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

3. On page 8, line 14, the comma after "10" was deleted by informal examiner's amendment for grammatical purposes.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claims 6-11, 21, 23-28, 30, 33-34, 36, and 42-43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. Claim 6 is not accurate in reciting the bushing being a first piece rotatably engaged to a second piece. (Similarly, claim 7 would not appear to be accurate in reciting the first piece attached to the attachment plate).

b. Claim 8 is not accurate in reciting a second piece attached to a fastener.

c. In claim 9, it is not clear what is meant by a "snap".

d. The preamble of claim 21 recites the invention as a mounting bracket, but the body of the claim recites features of the fastener; hence, it is not clear if the invention is a bracket, or the combination of a bracket and fastener. The same applies to claims 30, 36 and 43.

e. In claim 23, it is not clear which "attachment plate" is meant (as claim 22 recited a pair of attachment plates).

f. In claim 33, it is not accurate to recite a fastener attached to second piece.

g. In claim 42, it is not accurate to recite a fastener attached to the inner surface of the bushing.

### *Claim Rejections - 35 USC § 102*

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Ando et al (U.S. Patent 4,480,853).

Ando et al discloses (claim 1) a mounting bracket or supporting device 10 with an attachment plate 52 defining an opening and a bushing or spacer 38 in rotatable communication with the plate (note column 2, lines 46-52) adjacent the opening and configured to receive a fastener 34. The recitations in claim 1 that the bracket is for an inflatable curtain and for engaging an inflatable curtain are functional statements of intended use, failing to patentably define structure. A recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ 2d 1647 (1987). Regarding claim 2, the outer surface of spacer or bushing 38 is smaller than the opening in the attachment plate (since bobbin 32 also fits in the opening and spacer 38 inside the bobbin).

8. Claims 1 and 3-11 as best understood are rejected under 35 U.S.C. 102(e) as being anticipated by Mautsch et al.

Mautsch et al discloses (claim 1) a mounting bracket or holder 10 with or formed as an attachment plate defining an opening 12 and a bushing 14 in rotatable communication with the plate (note column 2, lines 12-14) adjacent the opening and configured to receive a fastener. The recitations in claim 1 that the bracket is for an inflatable curtain and for engaging an inflatable

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curtain are functional statements of intended use, failing to patentably define structure. A recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ 2d 1647 (1987). The legs of the plastic form or bushing 14 are deformable to facilitate positioning within the opening, and the legs also comprise at least one protrusion positioned at the inner surface of the bushing facilitating engagement with a fastener as functionally recited (claims 3-4). Regarding claims 5-6, the bushing when connected has a flange at each outer surface retaining it in the opening 12, and the bushing is made of two pieces 14, 14 rotatably engaged to a second piece (i.e., limited rotation). As broadly and indefinitely recited in claim 7, the first piece 14 is attached to the attachment plate (i.e., by the second piece 14), and the second piece 14 attached to a fastener (claim 8). As indefinitely and broadly recited in claim 9 the bushing is made of a male member 14 (nearest in Figure 1) and female member 14 that snap together, and (claim 10) the female member (when engaged with the male member) rotatably engages the attachment plate at opening 12. The male member 14 has a leg or protrusion that facilitates engagement with a fastener (claim 11).

9. Claims 1, 12-14 and 22-24 as best understood are rejected under 35 U.S.C. 102(b) as being anticipated by Murakami et al.

Murakami et al discloses (claim 1) a mounting bracket 6, 7 with an attachment plate 4 defining an opening 6a, 7a and a bushing 8 in rotatable communication with the plate as broadly recited (note column 5, lines 10-13) adjacent the opening as broadly recited in Figure 2 and configured to receive a fastener 2. The recitations in claim 1 of a bracket that is for an inflatable

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curtain and for engaging an inflatable curtain are functional statements of intended use, failing to patentably define structure. A recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ 2d 1647 (1987).

Regarding claims 12-14, plates 6, 7 are a pair of attachment plates as broadly recited, and the recitation that the plates are configured to engage a surface of a curtain are functional statements of intended use, failing to define structure (i.e., as functionally recited, the plates are capable of receiving a curtain between them if desired). Openings 6a and 7a are aligned to receive fastener 2, and bushing 8 is at least within plate 7. Regarding claims 22-24, the bushing 8 is in rotatable communication with plate 7 and has a flange extending outwardly from the outer surface to facilitate retention of the bushing in the opening as functionally recited (i.e., to keep it from sliding through to plate 6). In view of the indefinite recitation of "the attachment plate" in claim 23, the outer surface of the bushing is at least smaller than opening 6a in attachment plate 6. As functionally recited in claim 24, bushing 8 is deformable to facilitate positioning in opening 7a (note Figure 1, where bushing 8 has a larger diameter than opening 7a; hence it must deform when inserted).

### *Claim Rejections - 35 USC § 103*

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.



11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. Claims 25, 31-33, and 37-39 as best understood are rejected under 35 U.S.C. 103(a) as being unpatentable over Murakawi et al in view of Mautsch et al.

Murakawi et al does not teach a protrusion on the inner surface of the bushing. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Murakawi et al to include a protrusion on the inner surface of the bushing as taught by Mautsch et al's bushing 14, 14 with protruding legs in order to use a bushing that reduces noise when pivoting (claim 25). In the combination the bushing 14, 14 of Mautsch et al has pieces that rotatably engage to a limited degree, with the first piece (14 nearest in Figure 1 of Mautsch et al) attached to the plate (by the second piece), and the fastener in the combination attached to the second piece as broadly recited (by connection with the first piece) claims 31-33. The bushing pieces 14, 14 in the combination snap together as indefinitely recited, with the female member (the farthest piece 14 in Figure 1 of Mautsch et al) engaging the attachment plate at the opening in the combination and the male member (the nearest member 14) having a protrusion (leg) facilitating engagement with the fastener (claims 37-39).

*Allowable Subject Matter*

13. Claims 46-47 are allowed.
14. Claims 15-20, 40-41 and 44-45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
15. Claims 21, 26-30, 34-36, and 42-43 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

*Conclusion*

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. LeVey et al is cited to show a bag retention bracket with prongs.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric D Culbreth whose telephone number is 703/308-0360. The examiner can normally be reached on Monday-Thursday, 9:30-7:00 alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on 703-308-2089. The fax phone numbers for the

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organization where this application or proceeding is assigned are 703/746-3508 for regular communications and 703/308-2571 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Eric D Culbreth  
Primary Examiner  
Art Unit 3616

*Eric Culbreth*

*4/7/03*

ec

April 7, 2003